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NOTIFICATION.

No. L. D. 992—Legis. 84-52-3, dated Bangalore, the 1st September 1952.

In pursuance of the adoption of a motion by the Council of States on the 7th August 1952, the Special Marriage Bill, 1952, with the statement of objects and reasons, is hereby published for the purpose of eliciting opinion of the public thereon.

The last date within which opinions may be sent is 30th November 1952.

Opinions should be sent addressed to the Secretary to Government, Law Department, Government of Mysore, Old Public Offices, Bangalore.

Opinions sent direct to the Council of States Secretariat, New Delhi or to any other Ministry of the Government of India, will not be considered.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,

Legal Remembrancer and
Secretary to Government,
Law Department.

GOVERNMENT OF INDIA

Bill No. III of 1952.

THE SPECIAL MARRIAGE BILL, 1952.

(As introduced in the Council of States).

A

BILL

to provide a special form of marriage in certain cases, and for the registration of such and certain other marriages.

BE it enacted by Parliament as follows:—

PART I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) This Act may be called the Special Marriage Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to citizens of India outside India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act unless the context otherwise requires,—

(*a*) "consular officer" means a consul-general, consul, vice-consul, pro-consul or consular agent;

(*b*) "diplomatic officer" means an ambassador, envoy, minister, *charge d' affaires*, high commissioner, commissioner or other diplomatic representative, or a counsellor or secretary of an embassy, legation or high commission;

(*c*) "district" in relation to a Marriage Officer, means the area for which he is appointed as such under sub-section (1) or sub-section (2) of section 3;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "State Government", in relation to a Part C State, means the Lieutenant Governor or, as the case may be, the Chief Commissioner.

3. *Marriage Officers.*—(1) For the purposes of this Act, the State Government may, by notification in the Official Gazette, appoint one or more Marriage Officers for the whole or any part of the State.

(2) For the purposes of this Act in its application to citizens of India outside India, the Central Government may, by notification in the Official Gazette, appoint one or more diplomatic or consular officers to be Marriage Officers for any country, place or other area outside India.

PART II.

SOLEMNIZATION OF SPECIAL MARRIAGES.

4. *Conditions relating to solemnization of special marriages.*—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

(*a*) neither party has a spouse living;

(*b*) neither party is an idiot or a lunatic ;

(*c*) the parties have completed the age of eighteen years ;

(*d*) each party, if he or she has not completed the age of twenty-one years, has obtained the consent of his or her father or guardian to the marriage ;

(*e*) the parties are not within the degrees of prohibited relationship ; and

(*f*) where the marriage is solemnized outside India, both parties are citizens of India.

Explanation I.—Two parties are said to be within "the degrees of prohibited relationship" if one is a lineal ascendant of the other, or was the wife or husband of a lineal ascendant or descendant of the other, or if the two are brother and sister, uncle and niece, aunt and nephew, or the children of two brothers or of two sisters.

Explanation II.—'Relationship' includes—

(*a*) relationship by half or uterine blood as well as by full blood ;

(*b*) illegitimate blood relationship as well as legitimate ;

(*c*) relationship by adoption as well as by blood ;

and all terms of relationship in this section shall be construed accordingly.

5. *Notice of intended marriage.*—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the First Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

6. *Marriage Notice Book and publication.*—(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

7. *Objection to marriage.*—(1) Any person may, before the expiration of thirty days from the date on which any such notice has been given, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been given under section 5, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained, if necessary, to the person making the objection and shall be signed by him or on his behalf.

8. *Procedure on receipt of objection.*—(1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall refer the objector to a court of competent jurisdiction and shall postpone the solemnization of the marriage for thirty days from the receipt of such objection, if such court be open at the time and if not, until the expiration of thirty days from the opening of such court.

(2) The person objecting to the intended marriage may file a suit in any civil court of competent jurisdiction for a declaration that such marriage contravenes one or more of the conditions specified in section 4, and the court in which such suit is filed shall thereupon give the person filing it a certificate to the effect that such suit has been filed.

(3) If the certificate given by the court is lodged with the Marriage Officer within the period specified in sub-section (1), the Marriage Officer shall not solemnize the marriage until the decision of such court has been given and the period

allowed by law for appeal from such decision has elapsed, or, if there is an appeal from such decision, until the decision of the appellate court has been given.

(4) If such certificate is not lodged within the time granted by the Marriage Officer under sub-section (1), or if the decision of the court is that the marriage does not contravene any of the conditions specified in section 4, the marriage may be solemnized by the Marriage Officer to whom the notice of marriage has been given.

(5) If the decision of the court is that the marriage contravenes any of the conditions specified in section 4, the marriage shall not be solemnized.

(6) Notwithstanding anything contained in this section, where an objection is made under section 7 to an intended marriage of which notice has beeh given to a Marriage Officer outside India, the Marriage Officer shall not solemnize the marriage but shall transmit a copy of the objection with such statement respecting the matter as he thinks fit, to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer who shall conform to the decision of the Central Government in this behalf.

9. *Penalty where objection not reasonable.*—If it appears to the court in which the suit is filed that the objection was not reasonable and *bonafide*, it may impose on the person objecting additional costs by way of compensation not exceeding one thousand rupees and award the whole or any part of that amount to the parties to the intended marriage.

10. *Declaration by parties and witnesses.*—Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Second Schedule to this Act, and if either party has not completed the age of twenty-one years the declaration shall also be signed by his or her father or guardian, as the case may be, and in every case the declaration shall be countersigned by the Marriage Officer.

11. *Place and form of solemnization.*—(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties, unless each party says to the other in the presence of the Marriage Officer and the three witnesses,— "I, (A), take thee (B), to be my lawful wife (or husband)."

12. *Certificate of marriage.*—(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Third Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Registrar, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with, but nothing contained in this sub-section shall apply to render a marriage valid which would otherwise have been invalid.

13. *New notice when marriage not solemnized within three months.*—Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by section 5, or, where the person objecting to the intended marriage has filed a suit in a court of

competent jurisdiction and the decision of such court has been given, within three calendar months from the date on which the period allowed by law for appeal from such decision expires, or if there is an appeal from such decision within three calendar months from the date of the decision of the appellate court, or where a copy of the objection has been transmitted to the Central Government under sub-section (6) of section 8, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed and no Marriage Officer shall allow the marriage to be solemnized until a new notice has been given in the manner laid down in this Part.

PART III.

REGISTRATION OF MARRIAGES SOLEMNIZED IN OTHER FORMS.

14. *Registration of marriages solemnized in other forms.*—(1) Any marriage solemnized, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (III of 1872), or under this Act, may be registered under this Part by a Marriage Officer in India if the following conditions are fulfilled, namely :—

(*a*) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since ;

(*b*) neither party has at the time of registration more than one spouse living ;

(*c*) neither party is an idiot or a lunatic at the time of registration ;

(*d*) the parties have completed the age of twenty-one years ;

(*e*) the parties are not within the degrees of prohibited relationship as defined in section 4 ; and

(*f*) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

15. *Procedure for registration.*—Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Part, the Marriage Officer shall give public notice thereof in such manner as may be prescribed, and after allowing a period of thirty days for objections and after hearing any objection received within that period, and shall, if satisfied that all the conditions mentioned in section 14 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fourth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

16. *Appeals from orders under section 15.*—Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this Part may, within fifteen days from the date of the order, appeal against that order to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer to whom the application was made shall proceed in accordance therewith.

17. *Effect of registration of marriage under this Part.*—Where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Part, the marriage shall as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all the provisions of this Act shall thereupon apply to such marriage as if it had, in fact, been solemnized under this Act.

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PART IV.

CONSEQUENCES OF MARRIAGE UNDER THIS ACT.

18. *Effect of marriage on member of undivided family.*—The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

19. *Rights and disabilities not affected by Act.*—Subject to the provisions of section 18, any person whose marriage is solemnized under this Act, shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (XXI of 1850) applies :

Provided that nothing in this section shall confer on any person any right to any religious office or service or to the management of any religious or charitable trust.

20. *Person marrying under Act not to have right of adoption.*—No person who has his marriage solemnized under this Act shall have any right of adoption.

21. *Adoption by father or mother of person marrying under Act.*—When a person professing the Hindu, Buddhist, Sikh or Jaina religion has his marriage solemnized under this Act, his father or his mother where she is otherwise entitled to adopt shall, if he or she has no other son living, have the right to adopt any person as his or her son under the law to which he or she is subject.

22. *Act IV of 1869 to apply.*—Notwithstanding anything to the contrary contained in the Indian Divorce Act, 1869 (IV of 1869) that Act shall apply to all marriages solemnized under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that the marriage contravenes one or more of the conditions, specified in section 4 of this Act.

23. *Succession to property of parties married under Act.*—Succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the Indian Succession Act, 1925 (XXXIX of 1925).

PART V.

MISCELLANEOUS.

24. *Saving.*—Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions ; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

25. *Penalty on married person marrying again under this Act.*—Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code (Act XLV of 1860), as the case may be, and the marriage so solemnized shall be void.

26. *Punishment of bigamy.*—Every person married under this Act, who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code (Act XLV of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.

27. *Penalty for signing false declaration or certificate.*—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code (Act XLV of 1860).

28. *Penalty for wrongful action of Marriage Officer.*—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act—

(1) without publishing a notice regarding such marriage as required by section 5, or

(2) within thirty days after receipt by him of the notice of such marriage, or

(3) in contravention of any other provision contained in this Act, shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to a fine which may extend to five hundred rupees.

29. *Marriage Certificate Book to be open to inspection.*—(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the truth of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

30. *Transmission of copies of entries in marriag records.*—Every Marriage Officer in a State shall send to the Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and in the case of Marriage Officers outside India, the true copy shall be sent to such authority as the Central Government may specify in this behalf.

31. *Correction of errors.*—(1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

(3) Where a copy of any entry has already been sent under section 30 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

32. *Power to make rules.*—(1) The Central Government, in the case of diplomatic and consular officers and the State Government, in all other cases may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction ;

(*b*) the form and manner in which any books required by or under this Act shall be maintained ;

(*c*) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;

(*d*) the manner in which public notice shall be given under section 15;

(*e*) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of section 30.

33. *Repeals and savings.*—(1) The Special Marriage Act, 1872 (III of 1872), is hereby repealed.

(2) If immediately before the commencement of this Act there is in force in any Part B State any law corresponding to the Special Marriage Act, 1872, that law on such commencement shall also stand repealed, and section 6 of the General Clauses Act, 1897 (X of 1897), shall apply in relation to such repeal, as if the corresponding law had been an enactment:

Provided that without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897, any marriage registered under such corresponding law shall be deemed to have been registered under this Act.

THE FIRST SCHEDULE

(*See* section 5)

NOTICE OF INTENDED MARRIAGE

To

.....,

Marriage Officer for the .....District.

WE hereby give you notice that a marriage under the Special Marriage Act, 1952, is intended to be solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Age	Dwelling place	Length of residence
A. B.	Unmarried Widower Divorcee				
C. D.	Spinster Widow Divorcee				

Witness our hands this.....day of.....19 .

(Sd.) A.B.

(Sd.) C.D.

THE SECOND SCHEDULE

(*See* section 10)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A.B. hereby declare as follows:—

1. I am at the present time unmarried (or a widower or a divorcee, as the case may be).
2. I have completed years of age.
3. I am not related to C. D. (the bride) within the degrees of prohibited relationship.

[*And when the bridegroom has not completed the age of twenty one years.*]

4. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and C.D., and has not been revoked.
5. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) A.B. (the Bridegroom).

DECLARATION TO BE MADE BY THE BRIDE.

I, C. D., hereby declare as follows:—

1. I am at the present time unmarried (or a widow or a divorcee, as the case may be).
2. I have completed years of age.
3. I am not related to A.B. (the bridegroom) within the degrees of prohibited relationship.

[*And when the bride has not completed the age of twenty-one years.*]

4. The consent of my father (or guardian, as the case may be) has been given to a marriage between myself and A.B., and has not been revoked.
5. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) C.D. (the Bride).

Signed in our presence by the abovenamed A.B. and C.D. So far as we are aware there is no lawful impediment to the marriage.

(Sd.) G.H.
(Sd.) I.J.
(Sd.) K.L. } *Three Witnesses.*

[*And when the bridegroom or bride has not completed the age of twenty-one years.*]

Signed in my presence and with my consent by the abovenamed A.B. or C.D.

M. N. (the father or guardian of the abovenamed A.B. or C.D. as the case may be).

Countersigned E.F.,
Marriage Officer.

Dated the day of 19 .

THE THIRD SCHEDULE

(*See* section 12)

CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the day of 19 , A.B. and C.D. appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by section 10 and that a marriage under this Act was solemnized between them in my presence.

(Sd.) E.F.,
Marriage Officer for

(Sd.) A.B.,
Bridegroom.

(Sd.) C.D.,
Bride.

(Sd.) G.H.
(Sd.) I.J.
(Sd.) K.L.
Three Witnesses.

Dated the day of 19 .

THE FOURTH SCHEDULE

(*See* section 15)

CERTIFICATE OF MARRIAGE SOLEMNIZED IN OTHER FORMS

I, E.F., hereby certify that A.B. and C.D. appeared before me this day of 19 and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this day of 19 been registered under this Act, having effect as from

(Sd.) E.F.
Marriage Officer for

(Sd.) A.B.,
Husband.

(Sd.) C.D.,
Wife.

(Sd.) G.H.
(Sd.) I.J.
(Sd.) K.L.
Three Witnesses.

Dated the day of 19 .

STATEMENT OF OBJECTS AND REASONS.

This Bill revises and seeks to replace the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The parties may observe any ceremonies for the solemnization of their marriage, but certain formalities are prescribed before the marriage can be registered by the Marriage Officers. For the benefit of Indian citizens abroad, the Bill provides for the appointment of Diplomatic and Consular Officers as Marriage Officers for solemnizing and registering marriages between citizens of India in a foreign country.

2. Provision is also sought to be made for permitting persons who are already married under other forms of marriage to register their marriages under this Act and thereby avail themselves of these provisions.

3. The Bill is drafted generally on the lines of the existing Special Marriage Act of 1872 and the notes on clauses attached hereto explain some of the changes made in the Bill in greater detail.

NEW DELHI; C. C. BISWAS.
The 23rd July, 1952.

NOTES ON CLAUSES

Clause 1.—The Act is to have extra territorial operation so as to permit of marriages between citizens of India being solemnized outside India.

Clause 3.—Diplomatic and Consular Officers may be appointed as Marriage Officers outside India.

Clause 4.—Apart from the fact that the provisions of this Act, if passed, will apply to all persons marrying thereunder irrespective of the religion they may possess, the other changes of importance which have been made in this clause, a compared with section 3 of Act III of 1872, are the following, namely:—

(*a*) the addition of a new condition relating to idiocy and lunacy as in sub-clause (*b*);

(*b*) the raising the age limit for marriage to 18 in the case of either party, subject to the obtaining the consent of the father or guardian where he or she has not attained the age of 21 years;

(*c*) the provision for marriages abroad between citizens of India;

(*d*) the re-statement of prohibited degrees in simpler terms.

Clauses 5 to 12.—Apart from minor drafting changes, these clauses correspond to sections 4 to 13 of Act III of 1872 except that in clauses 5 and 11 the period of 14 days now available is being increased to 30 days. Incidentally, in clause 8 a special provision is sought to be made for the disposal of objections in the case of intended marriages abroad.

Clause 13 is a new and useful provision on the lines of section 52 of the Christian Marriage Act, 1872.

Clauses 14 to 17 are new and provide for the registration under this Act of marriages solemnized in other forms, so as to enable the parties thereto to avail themselves of the benefits of this Act. No application for such registration can, however, be made unless it is signed by both the parties to the marriage.

Clauses 18 to 27 correspond to sections 22, 23, 25, 26, 17, 24, 19, 15, 16 and 21 respectively of Act III of 1872. With respect to clause 19, the Caste Disabilities Removal Act, 1850, provides that so much of any law or usage as may be held in any way to impair or affect any right of inheritance of any person by reason of his or her renouncing or having been excommunicated from the communion of any religion or being deprived of caste shall cease to be enforced as law. In clause 21 it is now provided that the mother also, if otherwise entitled, may adopt a son.

Clauses 28 to 33.—Although some of these clauses are new, they are self-explanatory and do not call for any comment.